



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

Board of Supervisors
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Second District

ZEV YAROSLAVSKY
Third District

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Fourth District

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Fifth District

April 19, 2004

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

SACRAMENTO UPDATE

State Legislative Update on Workers' Compensation Reform

On April 16, 2004 the Legislature adopted the Conference Report on SB 899 (Poochigian), the final vehicle for a workers' compensation reform package. The vote was 77 to 3 in the Assembly and 33 to 3 in the Senate. The bill now proceeds to the Governor, who has indicated it will be signed (Monday) April 19, 2004, in Southern California.

In early 2003, the County supported a series of reform measures that would have provided savings or cost avoidance of roughly \$60 million annually. The enactment of AB 227 (Vargas) and SB 228 (Alarcon) in 2003 will provide the County with anticipated savings of \$25 million. The savings from SB 899 are estimated at more than \$25 million, bringing County savings from workers' compensation reform to at least \$50 million.

A comparison of the reform measures adopted by the Board and the pertinent provisions of SB 899 are attached. In addition, SB 899 contains the following provisions that will affect the County's workers' compensation program:

Disability/Temporary Disability

- Employer must authorize treatment to a maximum of \$10,000 during initial period of investigation until decision to accept or deny claim.
- Temporary disability is limited to 104 weeks for most types of injuries.
- Treatment for injury or illness must be consistent with American College of Occupational and Environmental Medicine (ACOEM) Occupational Medicine Practice Guidelines.
- Treatment not included in ACOEM Guidelines must follow protocols published by medical specialty societies and be based upon scientific medical evidence that is nationally recognized and peer-reviewed.
- Medical treatment is based upon the criteria of what is reasonably required to "cure or relieve" the injured worker from the effects of his or her injury.
- Limits occupational therapy to 24 visits per industrial injury. Previous limit of 24 visits applies only to physical therapy and chiropractic treatment.

Permanent Disability

Reduces permanent disability benefits for minor injuries (ratings of less than 15%) and increases permanent disability benefits for major injuries (ratings in excess of 70%).

Medical Billing and Payments

- Requires medical billings to be properly itemized.
- Confirms that payment for medical services is limited to the maximum amount in the official medical fee schedule in effect on date of service.

Vocational Rehabilitation

Reestablishes a vocational rehabilitation unit to foster review and approve vocational rehabilitation plans and fees developed by qualified rehabilitation representatives for injuries that occurred prior to January 1, 2004. This is to clean up an erroneous repeal of the rehab unit that occurred last year.

Return-to-Work Provisions

An employer with more than 50 employees must offer an injured employee regular work, modified work, or alternative work to accommodate his or her disability within 60 days of a disability becoming permanent and stationary.

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- Employees receive a 15% increase in disability benefits if employers do not offer regular, modified or alternative work within 60 days of achieving permanent disability status.
- Employers can reduce employee disability benefits by 15% if an employee refuses an alternate or modified work situation.

Fraud Prevention

- Immunity from civil suits for persons who, in good faith, report suspected fraud activity.

Speaking from the floor during action on SB 899, Senate President John Burton indicated that he recognized the need for more assistance to local governments which can put any additional savings derived from workers' compensation reform into providing local services. He also called for no more workers' compensation legislation until 2005.

We will continue to keep you advised.

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MAL:JF:DDN:ib

Attachment

c: Executive Officer, Board of Supervisors
 County Counsel
 Local 660
 All Department Heads
 Legislative Strategist
 Coalition of County Unions
 California Contract Cities Association
 Independent Cities Association
 League of California Cities
 City Managers Associations
 Buddy Program Participants

Comparison of County Policy on Workers' Compensation Reform to SB 899 (Poochigian)

Subject	County Policy	Related SB 899 Provision
Health Care Networks for Workers' Compensation Treatment	Allows employers to develop high quality networks of health care plans and providers to treat injured workers. Establish a physician certification program for physicians treating workers' compensation cases.	Treatment provided from employer list of health care service plans (Knox-Keene) and certified health care organizations with approval by State. <ul style="list-style-type: none"> • Pre-designated physician allowed only if within group health network. • Provides for up to three medical opinions for the same injury to resolve medical treatment dispute.
Treating Physician Presumption	Completely repeal the treating physician presumption of correctness.	Completely repeals the treating physician presumption of correctness.
Independent Medical Review	Establishes an independent medical review process with physicians trained in occupational medicine to resolve treatment issues.	Provides for independent medical review of disputed health care services by qualified medical experts with expertise in area of disability or illness.
Alternate Dispute Resolution	Allows all employers to use an alternative dispute resolution system to resolve workers' compensation claims with involvement with applicable unions.	Employers with collective bargaining units can negotiate alternate dispute resolution program for medical and disability benefits.
Return-to-Work	Includes public sector in the return-to-work incentive program.	Return-to-work provisions amended to include public or private small employers with 50 or less employees.
Disability Guidelines	Requires use of American Medical Association (AMA) Disability Guidelines to promote a more objective system for determining permanent disability.	AMA guidelines used to evaluate level of disability.

Subject	County Policy	Related SB 899 Provision
Apportionment of Pre-existing Conditions	Requires physician's diagnostic reports to address the contribution of pre-existing conditions when establishing permanent disability.	Physicians must apportion permanent disability based upon causation. <ul style="list-style-type: none"> Any prior permanent disability awards presumed to exist at time of injury. Permanent disability rating cannot exceed 100% for single part of body over lifetime.
Non-work-Related Injury or Illness	Eliminates the employer's liability for prior non-work-related illness.	Employer liable only for portion of disability directly caused by injury.
Penalty Revision	Revises penalties for delay or denial of benefits to maintain substantial penalties for employers who continually fail to pay claims, and reduce or cap penalties for minor payment delays.	Penalties for delay of benefits limited to payment delayed and 25% of the delayed payment, or \$10,000, whichever is less. State may invoke penalty of up to \$400,000 penalty for employers whose late payments display a "frequency that indicates a general business practice."
Penalty Claim Time Limit	Establishes a one year statute of limitations for filing penalty claims.	Two-year statute of limitations for filing penalty claims.
Disability Rate Problem	Corrects the minimum temporary disability rate problem that results in persons receiving more money while disabled than when they return to work.	Not included.
Decedent Payment	Repeals Labor Code Section 4702(a) (6) that provides for payments to decedent's estate when worker dies without dependents.	Not included.
Burden of Proof	Amends burden of proof and standards for determining job relatedness for cumulative injuries.	Not included.